IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2204 OF 2004

Kamble Pandharinath Ganpati ..Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

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Mr. Uday Warunjikar for the Petitioner.
Mrs. M.P. Thakur, Assistant Government Pleader for Respondent No.1.
Mr. V.B. Tapkir for Respondent No.4.

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CORAM: KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

24th April, 2006.

P.C. (Per DR. D.Y CHANDRACHUD, J) :

1. Rule, returnable forthwith. Counsel appearing for the Respondents waive service. By consent taken up for hearing and final disposal.

2. The Petitioner holds an M.A. degree in Psychology and a B. Ed. Degree from the Shivaji University. The Petitioner belongs to a scheduled caste and has been registered with the Rehabilitation Council of India under the provisions of the Rehabilitation Council of India Act, 1992. In September 1998, the Petitioner was

appointed as a Psychologist in a school for mentally challenged students at Wai. The Petitioner was initially appointed for the year 1998-99 on a part-time basis subject to the provisions of the Special School Code for physically and mentally handicapped students. The District Social Welfare Officer at Satara granted his approval on 4th February, 1999. The Petitioner came to be reappointed in 1999-2000 and for the year 2000-2001 and his appointment was approved. Once again from 1st March, 2001, the Petitioner was appointed as a Psychologist on a part-time basis. The school conducted by the Fourth Respondent has a capacity of 50 students which constitutes a duly approved intake capacity.

3. Under a Government Resolution dated 1st November, 1985 the staffing pattern for special schools was prescribed. Clause (6) of Rule 42 of the Special Schools Code lays down that under the category of subordinate medical staff, one Psychologist can be provided for a residential institution with an approved intake capacity of more than 50 students and in the case of a day school where the intake capacity is in excess of 75 students. This requirement appears to have been again reiterated on 27th August, 1997 by the subsequent Code. This position of a Psychologist is to

be a full time post in that case provided the institution fulfills the requirement of students. The Petitioner applied to the management for recognition as a full time employee. On the request made by the management, on 21st December, 2002, the District Social Welfare Officer of the Zilla Parishad informed the management that since its approved intake capacity was 50 students, the school did not fulfill the requirements of the Special School Code promulgated on 27th August, 1997 which again prescribes a minimum intake of 50 students.

4. In these proceedings, a direction is sought to the effect that the services of the Petitioner should be recognized on a full time basis or in the alternative, the provisions of the Special Schools Code to the extent to which they prescribe a given strength of students for appointment of a Psychologist as part of the subordinate medical staff be quashed and set aside in relation to schools for mentally challenged students. The submission in the Petition is that in the case of a school conducted for mentally challenged students, the services of a Psychologist are an integral part of the training provided to students. It has been urged that there is no nexus in prescribing a minimum intake capacity of more

than 50 students for appointment of a full time Psychologist, particularly in view of the fact that the presence of such an employee is required in a school for the mentally challenged round the clock. In the alternative, it has been submitted that the expression 'more than 50' should include a case where there are 50 students.

5. In the reply filed by the Social Welfare Officer, reliance has been placed on Rule 42 of the Special Schools Code in support of the submission that it is the eventuality where a school has more than 50 students that a full timer can be appointed as a Psychologist.

6. At the hearing of this Petition, the attention of the Court has been drawn to a Government Resolution dated 18th August, 2004. The aforesaid Government Resolution provides a staffing pattern for special schools meant for physically and mentally challenged students. The Schedule thereto provides in Item 5 a reference to the subordinate medical staff and it has been provided with reference to this entry that one post inter alia of a Psychologist is allowable, in a school for the mentally challenged. Having regard

to the terms of this Government Resolution, counsel appearing for the Petitioner has now only prayed that the proposal that was submitted by the management on 24th January, 2002 (which was rejected by a Social Welfare Officer on 21st February, 2002) be directed to be reconsidered in the light of the Government Resolution dated 18th August, 2004. This request is fair and proper. In order to enable a fresh determination to be made by the Social Welfare Officer of the Zilla Parishad at Satara in view of the Government Resolution dated 18th August, 2004, we quash and set aside the impugned communication dated 21st December, 2002. We direct the Third Respondent to reconsider the proposal of the management having regard to the terms of the aforesaid Government Resolution and in accordance with law. This exercise shall be carried out within a period of four weeks from the receipt of the order and necessary consequential direction shall be issued in the event that the request for the approval to the appointment of the Petitioner as a full time member of the subordinate medical staff is allowed. The Petition is accordingly disposed of. There shall be no order as to costs.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)